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December 7th, 1939.

The Secretary,
Taylors Mistake, Hut and Cave Occupiers Association (Inc).
TAYLORS MISTAKE.

Dear Sir,

re. Sumner Borough Council v. Haxell.

We have considered the claim of the Sumner Borough Council against Mr. Haxell for License fees in respect of two huts at Taylors Mistake.

The substantial question at issue is whether or not the huts are within the boundaries of the Borough.

The Borough boundary was first defined in 1891 and the relevant portion of the Proclamation is as follows:

"All that area in the Provincial District of Canterbury
"situated in the Survey District of Christchurch, Sumner
"and Pigeon Bay, bounded towards the North East by the
"Estuary of the Heathcote and Avon Rivers and by the
"ocean from a point due north to the northern most corner
"of Section 866 Block XVI Christchurch Survey District
"to Godley Head, thence by Lyttelton Harbour etc.

By subsequent Proclamations the area has been altered but the Taylors Mistake area was not affected.

The Crown Grants Act 1908 provides that:

"Where in any grant the ocean, sea or any sound, bay or
"Creek or any parts thereof affected by the ebb and flow
"of the tide, is described as forming the whole or part of
"the boundary of the land granted such boundary or part
"thereof shall be deemed and taken to be the line of high
"water mark of ordinary tides."

In ATTORNEY GENERAL AND FINDLAY (1919) N.Z.L.R. 513 "high water at ordinary tides" was held to mean the line of medium high tide between the spring and neap tides.

It appears clear therefore that the huts at Taylors Mistake are within the area of the Borough.

We understand further that the Borough Council contends that Mr. Haxells huts are on a roadway. We have examined the plans at the Land Transfer Office and find that a "paper" road exists round the Bay, and the huts are shown as being on the roadway.

It was held in Kaikoura County Council v. Smushall That once a road is dedicated and actually marked on a plan deposited in the Land Transfer Office, the actual construction of the road on the ground is unnecessary and the road is under the control of the local body.

In the present case we are satisfied that the road exists and it is shown on D.P. 4807 in the Lands and Survey Office.

The only other point is whether the Council has power to grant a License for the erection of a hut on a roadway. This was decided in favour of the Council in Christchurch City Council v. Shah and we are satisfied that the action could not be successfully contested on that ground.

For the reasons above stated we are of opinion that the area is within the boundaries of the Sumner Borough and that the action cannot be successfully defended.

We have investigated the points raised by Mr. Wilson as to special legislation having been passed giving the Borough Council rating powers within the apparent boundaries of the Borough. We find however that these merely vested portions of the foreshore in the Borough and do not affect the position.

We have advised Mr. Haxell and the Sub Committee appointed to act with him of our opinion.

We are returning to you the maps and Minute Books.

Yours faithfully,
CLIFFORD JONES & LEE
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